

Special Civil Application No 2355 of 1988

Date of decision: 12/02/96

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PRAVINKUMAR alias PRAVINCHANDRA B. GANATRA,  
vs  
COMPETENT AUTH.& DY.COLLECTOR (ULC), RAJKOT & ANR.

Appearance:

Shri J.R. Nanavaty, Advocate, for the Petitioner

Shri D.N. Patel, Asst. Govt. Pleader, for the  
Respondents

Coram : MR.JUSTICE A.N.DIVECHA

#### ORAL JUDGEMENT

The order passed by the Competent Authority at Rajkot (respondent No.1 herein) on 15th September 1982 under sec. 8(4) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad (respondent No.2 herein) on 10th February 1988 in Appeal No. Rajkot-225 of 1987 is under challenge in this petition under art. 227 of the Constitution of India. By his impugned order, respondent No.1 declared the holding of the petitioner to be in excess of the ceiling limit by 2781.78 square meters.

2. The facts giving rise to this petition move in a narrow

compass. The petitioner filled in his declaration in the prescribed form under sec. 6(1) of the Act with respect to his holding in the office of respondent No. 1. That form was duly processed by respondent No. 1. After observing necessary formalities under sec. 8 of the Act, by his order passed on 15th September 1982 under sec. 8(4) thereof, respondent No.1 declared the holding of the petitioner to be in excess of the ceiling limit by 2781.78 square meters. Its copy is at Annexure A to this petition. The aggrieved petitioner carried the matter in appeal before respondent No.2 under sec. 33 of the Act. It came to be registered as Appeal No. Rajkot-225 of 1987. By the order passed on 10th February 1988, it came to be dismissed after its preliminary hearing on the ground that it was time-barred. Its copy is at Annexure B to this petition. The aggrieved petitioner has thereupon approached this Court by means of this petition under art. 227 of the Constitution of questioning the correctness of the order at Annexure A to this petition as affirmed in appeal by the appellate order at Annexure B to this petition.

3. It transpires from the appellate order at Annexure B to this petition that the order at Annexure A to this petition was challenged more than 5 years after its date. The delay was to the tune of 5 years 3 months. At the stage of its preliminary hearing, it was found from the material on record that the order at Annexure A to this petition was challenged earlier in appeal and that appeal came to be registered as Appeal No.. Rajkot-82 of 1982. That appeal was found deficient with respect to certain requirements of law and it was sent back on 19th November 1982. It is the case of the petitioner that he was not aware of disposal of the earlier appeal and, since the earlier appeal was not disposed of, he filed another appeal challenging the order at Annexure A to this petition.

4. Learned Assistant Government Pleader Shri Patel for the respondents has kept one officer from the office of respondent No.2 present with records of the case in connection with the aforesaid contention taken on behalf of the petitioner. He has brought with him the Appeal Register with respect to appeals arising from matters within the urban agglomeration of Rajkot for 1982-83. In the register, along with other particulars, in last but one column, a noting is made regarding how each appeal has come to be disposed of. With respect to Appeal No. Rajkot-82 of 1982, the endorsement is that the appeal was returned for want of certain particulars for the purpose of supplying deficiencies. The officer from the office of respondent No.2 has also brought with him the outward register for the relevant period beginning from 25th May 1982 up to 31st December 1982. Entry No. 3705 shows despatch of the appeal to the appellant on 19th December 1982 at the address given in the memo of appeal. That address of the appellant tallies with his

address as shown in the title cause of this petition. Since it was sent by post, a presumption as to its delivery can be raised under sec. 114 of the Evidence Act, 1872. It thus becomes clear that the order at Annexure A to this petition was appealed against and it was not pursued further by supplying the deficiencies found at that stage. It would certainly mean that the petitioner was not interested in prosecuting with the appeal at that stage. It would amount to its dismissal for want of prosecution. That order would become final in view of sec.33(3) of the Act.

5. It is a settled principle of law that an appeal is a continuation of the original proceeding. The order appealed against would certainly merge in the appellate order. If the appellate order becomes final, the original order would stand merged into it and it would lose its independent existence for the purpose of its further challenge. In that view of the matter, another appeal after a period of more than 5 years for questioning the correctness of the order at Annexure A to this petition was rightly held not maintainable and time-barred. No party can be permitted to reopen a case which becomes final. If this is permitted to be done, the attachment of finality by a statutory provision would be rendered nugatory.

6. There is another hurdle in the way of the petitioner in this case. Prior to his challenging the order at Annexure A to this petition in appeal, it transpires from the appellate order at Annexure B to this petition that inter alia the notification under sec. 10(3) of the Act pursuant to the final statement prepared under sec. 9 thereof with respect to the order at Annexure A to this petition was published on 9th January 1984. The effect of such notification under sec. 10(3) of the Act would be vesting of the excess land declared under the order at Annexure A to this petition in the State Government free from all encumbrances. In view of the binding ruling of the Supreme Court in the case of State of Punjab v. Gurdev Singh reported in AIR 1992 SC 111, such notification was required to be challenged within the time-limit prescribed by the Limitation Act, 1963 even if it was found to be null and void. The notification under sec. 10(3) of the Act issued on 9th January 1984 was not challenged at any point of time. Since the excess land declared under the order at Annexure A to this petition as vested in the State Government, the hands of the clock need not be permitted to move backwards at the instance of the petitioner in this petition.

7. It cannot be gainsaid that the extra-ordinary jurisdiction conferred on the High Court under art. 227 of the Constitution of India is discretionary. No discretion is required to be exercised in favour of the petitioner in view of what is stated hereinabove.

8. In view of my aforesaid discussion, the impugned orders at Annexures A and B to this petition call for no interference by this Court in this petition under art. 227 of the Constitution of India.

9. In the result, this petition fails. It is hereby rejected. Rule is accordingly discharged with no order as to costs. The interim relief stands vacated.

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